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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 179.

CECIL L. COURTNEY, PHILIP T. FERRIS, AND RAY PARKS,
PETITIONERS,

vs.

TY LOCKETT,
RESPONDENT.

On Writ of Certiorari to the Supreme Court of the State of Kansas.

BRIEF OF PETITIONERS.

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On Writ of Certiorari to the Supreme Court of the State of Kansas.

BRIEF OF PETITIONERS.

I. OPINION OF COURT BELOW.

The opinion of the Supreme Court of Kansas (R. 173) is reported in volume 175 at page 704 of the Kansas Reports, and appears at pp. 173 to 192 of the printed transcript of the record herein.

II. JURISDICTION.

1. The decree to be reviewed herein was rendered on March 3, 1954; rehearing denied, April 14, 1954 (R. 196). Petition for certiorari and brief in support thereof, certified record, and order for entry of appearance of coun-

sel were filed in this court on May 29, 1954, and docketed on June 30, 1954.

2. The statutory provision which is believed to sustain the jurisdiction of this court is section 1257 of Title 28 of the United States Code (62 Stat. 929).

3. The decree of the Supreme Court of Kansas is a final judgment and that court is the highest court in the state in which a decision in these cases could be rendered. Petitioner's motions for rehearing were denied. Rights, privileges and immunities guaranteed to petitioners by the Constitution of the United States were specially set up and claimed in petitioner's original applications for writs of habeas corpus in the state court, and in their briefs and oral arguments before it.

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The constitutional provisions involved are:

(a) Section One of the Fourteenth Amendment to the Constitution of the United States.

(b) Section Ten of the Bill of Rights of the Constitution of the State of Kansas.

Statutes involved are:

(a) General Statutes of 1949 of the State of Kansas Section 62-301; Section 20-1201; Section 20-1202; Section 20-1203; Section 20-302.

The texts of the foregoing are set forth in the appendix hereto.

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IV. QUESTIONS PRESENTED FOR REVIEW.

(a) May witnesses subpoenaed to testify at a secret inquisition proceeding be accused of direct contempt of court and be tried, sentenced and committed to jail without interruption of the secrecy?

(b) Does the failure to afford witnesses an opportunity to confer with counsel of their choice, or to defend or purge themselves of an alleged contempt, when they stand accused of direct contempt, at a secret inquisition proceeding, constitute a denial of procedural due process of law?

V. STATEMENT OF THE CASE.

These were original applications for writs of habeas corpus brought in the Supreme Court of the State of Kansas and consolidated for hearing. The petitioners alleged they were unlawfully imprisoned by the respondent sheriff pursuant to judgments and sentences of a judge of the District Court of Sedgwick County, Kansas, who was presiding at an inquisition proceeding allegedly authorized by the laws of that state. (R. 1-9) The applications were denied (R. 173-189), and petitioners moved for rehearing and permission to file briefs in support of their motion (R. 192). Permission to file briefs was granted and petitioners were allowed bail (R. 193-196). After consideration of petitioners' briefs and arguments, their motion for rehearing was denied (R. 196).

The principal questions presented by petitioners' applications and determined adversely to them were:

1. Whether the judge of the District Court had jurisdiction to render the judgments and impose the sentences in a secret proceeding without affording the petitioners an opportunity to confer with counsel prior to the judgments and sentences.
2. Whether the privileges and immunities extended to the petitioners by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States were abridged by the judgments, sentences and imprisonment.
3. Whether the inquisition proceeding at which petitioners were adjudged guilty of contempt was valid under the Constitution and laws of the State of Kansas.

Petitioners were taxicab drivers and members of a local of the teamster's union which had been called out on strike. The employers at whom the strike was directed were four taxicab companies, owned by two individuals, Rex Bulleigh and Jack Graham (R. 150,) and constituted a monopoly of the taxi service in the City of Wichita. Violence occurred during the progress of the strike. The first serious act of which complaint was made was committed by one of the owners of the cab companies (Pet. Ex. IX, R. 159-160). Altogether thirty-six separate acts were made subjects of formal complaint to the city and county police authorities between December 1, 1953, and January 9, 1954, which involved striking and non-striking cab drivers and the owners of

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the cab companies (Res. Ex. "A" & "B", R. 17-23).

On January 7, 1954, the county attorney of Sedgwick County filed a statement and request for inquisition (Res. Ex. "E", R. 28) pursuant to G. S. 1949, 62-301.[1] The proceeding was transferred from the division of the court in which it was originally filed to Division 2 of the court on January 8, 1954, (Res. Ex. "F", R. 29). On January 11, 1954, special deputy county attorneys were appointed to conduct the inquisition (Res. Ex. "G", "H", "I", and "J"; R. 30-34) Forthwith subpoenas were issued for two of the petitioners on January 18, 1954, (R. 14 and 43); a forthwith subpoena was served on the other petitioner on January 19, but he was not interrogated until the 20th (R. 85). The petitioner Ferris was arrested on a bench warrant and held incommunicado in the county jail for six hours prior to his interrogation (Pet. Ex III, R. 152). The petitioners were brought before the inquisition tribunal separately and were told they were not entitled to counsel. The proceeding was secret and the atmosphere was hostile. The petitioners averred they were subjected to intimidation (Pet. Ex. III, R. 152; Ex. IV, R. 153; Ex. V, R. 155). Other witnesses subpoenaed to testify before the inquisition proceeding corroborated substantially the affidavits of the petitioners as to the manner in which the inquisition was conducted.

One witness, Elva Smith, the wife of the business agent of the local, was arrested and taken before the inquisition at about 6:00 p. m., on January 11. She was

1. Appendix C, p. 48.

interrogated as to the whereabouts of her husband and when she answered she did not know, she was held in contempt and placed in the county jail. She was subsequently released after midnight on condition she return and testify the next morning; this she did (Pet. Ex. II, R. 151-152).

Another witness, James J Hyatt, was subpoenaed on January 14; he accompanied the officer serving the process and remained at the court house for eight hours, and was then advised that the inquisition had been adjourned; he returned on seven separate days and waited periods of two to eight hours before being dismissed. This witness was actually before the inquisition three times; he was informed that not only was he not entitled to counsel, but that he was not to consult with counsel after his testimony was concluded (Pet. Ex. VII, R. 157-158).

Victor E. Haines received similar treatment (Pet. Ex. VI, R. 156-157), as did Sam Smith, the business agent of the local (Pet. Ex. I, R. 148-150).

The petitioners refused to answer certain questions propounded by the special deputy county attorneys and the presiding official, the district judge, during their interrogations. They were immediately accused of direct contempt of court, adjudged guilty and sentenced to jail. Ferris and Parks were sentenced to terms of one year; Courtney was sentenced to ninety days (R. 102; R. 142-143; R. 135-136). At the time of their respective refusals to answer the questions directed to them, and the accusations, judgments and sentences, the only persons

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permitted in the court room were the judge who presided at the inquisition, members of the county attorney staff, law enforcement officials and, apparently, a court reporter. In the case of Ferris there were present in the courtroom, in addition to the petitioner, three attorneys representing the State of Kansas, the judge, a deputy sheriff, the bailiff and a city detective. There were no representatives of the general public or press present at any stage of the inquisition proceeding. (Pet. Ex. III, R. 152-153). When Courtney was brought before the inquisition there were five attorneys representing the State, the judge, the bailiff, a deputy sheriff, and two city policemen; during the entire proceeding the doors were closed and no members of the public or representatives of the press were permitted entrance (Pet. Ex. IV, R. 153-154). Parks received similar treatment (Pet. Ex. V, R. 155-156).

These facts were presented to the court below on affidavit and were uncontroverted by the respondent. They must be considered here as true. Petitioners submit that the proceeding at which they were accused and convicted of contempt of court, and at which they were sentenced and committed to jail did not meet the standards of due process of law as established and required by the Fourteenth Amendment to the Constitution of the United States,[2] and Section ten of the Bill of Rights of the Constitution of the State of Kansas.[3]

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2. Appendix A, p. 47.
3. Appendix B, p. 47.

ARGUMENT.

Summary of the Argument.

Point A: The basic law of Kansas and the great majority of the other jurisdictions in this country provide for the public trial of an accused in all criminal prosecutions. (Sec. 10, Bill of Rights, Const. of Kansas; 6th Amend., Const. of U. S.). Contempts of court are in the nature of criminal prosecutions. (G. S. Kan. 1949, 62-301; *Gompers v. U. S.*, 233 U. S. 604; *In re Sims*, 54 Kan. 1; 37 Pac. 135.)

As the proceedings in which petitioners were convicted of contempt were criminal prosecutions, petitioners were entitled to the procedural due process of law required by the Federal and State Constitutions. (16 C. J. S. 1171; *Re William Oliver*, 333 U. S. 257; 14th Amend., Const. of U. S.; Sec. 10, Bill of Rights, Const. of Kans.)

A judge designated by statute to conduct a secret inquisition proceeding to investigate alleged offenses against the laws of a state, may not turn such an inquisition proceeding into a trial for criminal contempt and proceed against witnesses without interruption of the secrecy, and during the continuing exclusion of the public. (*Re William Oliver*, 333 U. S. 257.)

An accuseds right to a public trial is of a fundamental character; and it is immaterial whether or not prejudice to an accused results from the

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denial of a public trial. A judgment of conviction must be reversed where an accused is denied a public trial. (*People v. Jelke*, .. App. Div. .., 130 N. Y. S. 2d 662; *People v. Byrne*, 84 CA 2d 72, 190 P. 2d 290; *Re William Oliver*, 333 U. S. 257.)

Point B: The right to assistance of counsel and the right of an accused to be heard in defense in a criminal prosecution is of a fundamental character; and the denial of those rights to such an accused is an abridgment of the "due process of law" clause of the 14th Amendment. (*Cooke v. U. S.*, 267 U. S. 517; *Re William Oliver*, 333 U. S. 257; *Powell v. Alabama*, 287 U. S. 48; *Grosjean v. American Press Co.*, 297 U. S. 233; *Brown v. Mississippi*, 297 U. S. 278.)

The record in the instant case discloses that petitioners were accused and convicted of direct contempt of court in a secret inquisition proceeding. A "direct contempt of court" is an act committed in open court which tends to vitiate the court's authority, and may be punished summarily in order to vindicate that authority. A distinction exists, however, in the case of contempt not committed in open court, and in such cases, persons accused and tried for contempt of court are entitled to certain established procedures consonant with the concepts of "due process of law" required by the 14th Amendment. (*Cooke v. U. S.*, 267 U. S. 517; *Re William Oliver*, 333 U. S. 257.)

POINT A.

The State of Kansas has, in its basic law, recognized and provided standards of procedure which are generally accepted as essential to the preservation of the rights of individuals and to insure the fundamental fairness of its legal proceedings.

Section Ten of the Bill of Rights of the Constitution of Kansas provides in part:

> "In all prosecutions, the accused shall enjoy the right to appear and defend in person, or by counsel; . . . and a speedy public trial . . . "

The provisions of the Kansas Constitution plainly require that "an accused shall enjoy the right to . . . a . . . public trial" in all prosecutions.

The court below has held that the inquisition was not a "criminal prosecution",[4] and that in it, petitioners were not charged with any crime. Criminal actions or prosecutions are defined by the statutes of Kansas in G. S. 1949, 60-107, which provides as follows:

> "A criminal action is one prosecuted by the state as a party against a person charged with a public offense for the punishment thereof."

It is submitted that the prosecutions for contempts of court are, at least, in the nature of criminal prosecutions.

The statute, G. S. 1949, 62-301,[5] pursuant to which the inquisition was conducted, provides in part:

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4. In re Ferris, 175 Kan. 704, 711; Record, p. 182.
5. Appendix C, p. 48.

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> "A judge or justice of the peace may fine or imprison any person for contempt on account of his refusal to be sworn or to answer questions as a witness . . . "

Clearly, the quoted portion of G. S. 1949, 62-301, defines a public offense and provides a penalty therefor. The offense is designated "contempt". The journal entries of judgment in which the convictions and sentences of the petitioners were recorded (Res. Ex. "M"—R. 36, 48 and 89) indicate that the proceedings at which the petitioners were convicted of the offense of contempt were instituted by the State although it does not appear in the caption of the journal entries that the State was a party. It is clear, however, that the State conducted the prosecution for contempt at the secret inquisition proceeding.

In *Gompers v. United States*, (1913), 233 U. S. 604, in an opinion by Justice Holmes, it was said:

> "It is urged in the first place that contempts cannot be crimes, because, although punishable by imprisonment, and therefore, if crimes, infamous, they are not within the protection of the Constitution and the Amendments giving a right to trial by jury, etc., to persons charged with such crimes . . . It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statute offenses, because trial by jury as it has been gradually worked out and fought out has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech.

> So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure . . . and that, at least in England, it seems that they still may be and preferably are tried in that way . . . "

That contempt proceedings against a recalcitrant witness are criminal in nature under the laws of Kansas was determined in the case of *In re Sims*, (1894), 54 Kan. 1, 37 Pac. 135, wherein it was said:

> "That a proceeding to punish for contempt is in its nature a criminal proceeding has been directly decided by this court (The State v. Dent, 29 Kan. 416) as well as by courts of other states."

The facts of the cited case disclose that the petitioner refused to answer questions propounded by a county attorney at an inquisition and was thereupon committed to jail for contempt by the county attorney. The Supreme Court of Kansas held that the section of the act conferring power upon county attorneys to commit witnesses for contempt was unconstitutional and void. As a direct result of the decision in the cited case, the antecedent of the current inquisition statute was adopted which provided for inquisitions before judicial officers.

A special concurring opinion, filed by Justice Johnston in the *Sims* Case, supra, contained the following language which accurately defines the nature of the offense and the relationship of the accused and the state:

> "When petitioner refused to answer the question a controversy arose, he was, in effect, accused of an offense. The state was the plaintiff and the prisoner the defendant."

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It is clear that the contempt with which petitioners were charged was direct and criminal. In 12 Am. Jur. 390, Section 4, "direct contempt" is defined. It is there said:

> "A direct contempt consists of words spoken or acts committed in the presence of the court or during its intermission which tend to subvert, embarrass, or prevent justice."

At page 392, Section 6, it is said:

> "Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. Civil contempt proceedings are those instituted to preserve the rights of private persons to suits . . . The former are criminal and punitive, in their nature, *and the government, the courts, and the people are interested in their prosecution* . . . " (Emphasis supplied.)

In the case of *Holloway v. Water Co.*, (1917), 100 Kan. 414, 421, 167 Pac. 265, the Supreme Court of Kansas approved the rule above quoted, citing *Bessette v. W. R. Conkey & Co.*, 194 U. S. 324.

Since the proceedings in contempt against the petitioners in the instant case were in the nature of criminal prosecutions it must follow that petitioners were entitled to the procedural due process of law required in criminal prosecutions by the State and Federal Constitutions. The due process of law so contemplated is defined in 16 C. J. S. 1171, Sec. 579, where it is said:

> "Due process in a criminal case requires a law creating or defining the offense, a court of competent jurisdiction, accusation in due form, notice and

> opportunity to defend, a trial before an impartial judge or judge and jury according to established criminal procedure, and a right to be discharged unless found guilty."

Some of the above elements need not be present in prosecutions for direct contempts of court. It has been said where the contempt is committed in the presence of the court or tribunal, due process does not require an accusation in due form, notice, or an opportunity to defend. It is submitted, however, that "a trial before an impartial judge . . . according to established criminal procedure" are essential elements of the due process of law guaranteed by the Fourteenth Amendment to persons accused of direct contempt, and that the "trial" required must conform to established criminal procedure.

Criminal trials in Kansas, as in every other jurisdiction in this country, are conducted in public. The right to a public trial is specifically guaranteed to an accused by the Constitution of the State.[6] That right is a personal right of the accused. It is not contended that the public trial contemplated by Section Ten of the Bill of Rights of the Constitution of Kansas, or the Sixth Amendment to the Constitution of the United States, confers a right on every member of the public to be present at all criminal prosecutions. It is, however, urged that an accused has an inalienable right to be tried, adjudged and sentenced at a proceeding from which the public is not excluded. The reason for the existence of the right con-

6. Appendix B, p. 47.

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ferred upon an accused by Constitution or statute, is the interest of the community as a whole in the prevention of abuse of judicial authority. A trial from which the public is excluded provides an opportunity, at least, for the exercise of arbitrary and improper power by the presiding official. A public trial, on the other hand, subjects judicial action to public scrutiny, and any encroachment on traditional liberties may thus be exposed, and curtailed by legislation, if need be.[7]

Wigmore lists three reasons, independent of evidential service, for the existence of the right to a public trial. In 6 Wigmore (3rd Ed.) 335, it is said:

> "(a) Subjectively, a wholesome effect is produced, analogous to that secured for witnesses, upon all the officers of the court, in particular, upon the judge, jury, and counsel. In acting under public gaze, they are more strongly moved to a strict conscientiousness in the performance of duty. In all experience, secret tribunals have exhibited abuses which have been wanting in courts whose procedures were public.
>
> "(b) Persons not called as parties to the suits before the courts may nevertheless be affected, or think themselves likely to be affected, by pending litigation. They should have the opportunity of learning whether they are thus affected, and of protecting themselves accordingly; they have the right to be present for the purpose of hearing what is going on.
>
> "(c) The educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by a system of secrecy . . . "

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7. See 49 Col. Law Review 110, 117.

It was said in the case of *Re William Oliver*, 333 U. S. 257, in the opinion written by Justice Black, at p. 266:

> "This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage."
>
> • • •
>
> "The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the *lettre de cachet*. All of these institutions obviously symbolized a menace to liberty."

The cited case and the instant case are nearly analogous upon their respective facts. In the *Oliver* case, the petitioner was convicted of contempt and sentenced to jail in secrecy at a "one-man grand jury" proceeding authorized by the statutes of Michigan.[8] The petitioner sought a writ of habeas corpus in the Supreme Court of Michigan, and upon denial of his application there, he petitioned this court for certiorari, which was granted. The petitioner contended that the summary manner in which he had been sentenced to jail in the secrecy of the "grand jury" chambers had deprived him of his liberty without due process of law. This court agreed.

The *Oliver* case and the instant case are distinguishable only upon the basis of the differences in terminology of the Michigan Statute (3 Mich. Comp. Laws of 1929, Sec. 17217, et seq.)[9] and the Kansas Statute (G.

8. Appendix D, p. 52.
9. Ibid.

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S. 1949, 62-301),[10] and the fact that in the former the petitioner was accused and convicted of testifying "evasively," while the petitioners in the instant case refused to answer certain questions propounded by their inquisitors. It could be well argued that in the case of the petitioner Courtney, the second distinction does not exist, as it appears from the record that he was punished for his refusal to answer a question *in the manner* the inquisitors desired it to be answered (R. 134-135). In any event, in both the *Oliver* case and the instant case, the petitioners were subpoenaed as witnesses to appear before an investigative body created by statute; in both cases a judicial officer presided, and in both the proceeding was conducted in secret.

Many reasons may be advanced for the secrecy of proceedings conducted for the purpose of the investigation of crimes. However, no reason exists, nor can exist, for secrecy when the investigative body ceases to function for the purpose for which it was designed, and begins to function as a court of law.

It was said in the *Oliver* case, supra, at p. 266:

> "*First*, Counsel have not cited and we have been unable to find a single instance of a criminal trial conducted in camera in any federal, state or municipal court during the history of this country. Nor have we found any record of even one such secret criminal trial in England since abolition of the Court of Star Chamber in 1641, and whether that court ever convicted people secretly is in dispute. Summary trials for misconduct called contempt of court

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10. Appendix C, p. 48.

> have not been regarded as an exception to this universal rule against secret trials . . . "

The transition of the nature of the proceeding occasioned by the recalcitrance of the witnesses was ignored by both the Michigan and Kansas Supreme Courts.

In the instant case counsel for respondent and the court below have confused the role played by the judicial officer presiding at the inquisition proceeding. In its opinion the Supreme Court of Kansas implied that the inquisition was equivalent to an investigation by a grand jury. It was said (R. 183):

> " . . . this inquisition was a preliminary investigative proceeding to uncover crime. . .
>
> • • •
>
> "Proceedings before grand juries and similar investigative bodies seldom, if ever, have been conducted publicly."

The statute[11] under which the inquisition proceeding was held, provides, in part:

> " . . . said county attorney . . . may file with the judge of the district court . . . a written statement . . . alleging any offense against the laws of this state, and such judge . . . shall . . . issue a subpoena for the witnesses . . . to be and appear before such judge . . . to testify concerning any offense against the laws of the state."

The quoted portion of the statute requires the "judge" to serve or act in a capacity other than judicial. The judge is not given any discretionary powers by the statute; its terms are mandatory—"such judge . . . shall

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11. Appendix C, p. 48.

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. . . issue." While the statute does not explicitly describe the function to be discharged by the judicial officer, it may be fairly inferred that the function is ministerial rather than judicial. The statute[12] also provides that

> "A judge . . . may fine and imprison any person for contempt on account of his refusal to be sworn or answer questions as a witness."

This, it appears, is the only occasion that judicial discretion is permitted to the judge. He "may fine and imprison any person for contempt on account of his refusal . . . answer questions as a witness." This authority arises only upon the recalcitrance of a witness.

The legislative history of the act discloses that a prior enactment conferred, or attempted to confer, power to punish for contempt upon county attorneys. This was held to be an improper delegation of judicial authority upon the executive. (*In re Sims*, 54 Kan. 1.) The legislature then provided that the inquisition might be held before a judge for the sole purpose of compelling witnesses to testify upon pain of punishment for contempt. The question now arises: What is the correct character of the "judge" before whom an inquisition proceeding is held? Does that judge still wear his judicial hat, or is he now an inquisitor? Or does he acquire characteristics of both judge and inquisitor, and simultaneously discharge both functions?

Petitioners submit that the roles of judge and inquisitor are incompatible. A judge is by definition an im-

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12. Ibid. 48.

partial arbiter whose function is to assure the orderly administration of justice. An inquisitor, on the other hand, is of partisan stripe whose function is to elicit information and evidence to prove or disprove facts. A sinister connotation attaches to the latter because of society's unfortunate experience with inquisitors generally. Torqnuemada,, the Dominican of Segovia, Justice Hathorne of Salem, Baron Jeffreys of the "Bloody Assizes", and, not beyond the memory of living men, Isaac Parker, late of the Federal bench at Fort Smith, left their mark as judicial inquisitors. While their motives may have been impeccable in the frame of their contemporary societies, history has demonstrated that justice was poorly served by their assumption of the dual role of judge and inquisitor.

Petitioners urge that a presiding official at an inquisition proceeding, although he be a judge of a court of law, should not be permitted to exercise the judicial power and authority to convict and punish for contempt during the progress of the proceeding *in camera.*

The propriety of the designation by the legislature of a judicial officer to serve as the presiding official of an inquisition proceeding is not raised herein. However, it is earnestly submitted that where a judge is required to act in an extra-judicial capacity by law, he may not exercise his inherent judicial powers while so acting.

The Supreme Court of Kansas has disapproved the combination of executive and judicial authority and duties when they are required to be exercised simultaneously. It was said *In re Sims,* 54 Kan. 1, at p. 5:

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"It may be conceded that the legislature may confer judicial power on an individual who fills an executive office. The prior decisions go no further than this. The point here involved, whether executive and judicial power may be mingled and combined, may be exercised by the same person at the same time and in the same proceeding, has never yet been decided by this court.

" . . . Such a combination of powers is not in accordance with the theory of our government nor with the orderly administration of justice as administered in this country and in England. The power to punish for contempt is never exercised except by legislative bodies or judicial officers. (*Whitcomb's Case*, 120 Mass. 118; *Langenberg v. Decker*, 31 N. E. Rep. (Ind.) 190; *Kilbourn v. Thompson*, 103 U. S. 168; *Attorney General v. McDonald*, 3 Wis. 703.)"

In the *Oliver* case, supra, this court said, at p. 264:

"Many reasons have been advanced to support grand jury secrecy. See e. g., Hale v. Henkel, 201 U. S. 43 . . . State v. Branch, 68 N. C. 186 . . . But those reasons have never been thought to justify secrecy in the trial of an accused charged with violation of law for which he may be fined or sent to jail. Grand juries investigate, and the usual end of their investigation is either a report, a 'no-bill' or an indictment. They do not try and they do not convict . . . Even when witnesses before grand juries refuse to answer proper questions, the grand juries do not adjudge the witnesses guilty of contempt of court in secret or in public or at all. Witnesses who refuse to testify before grand juries are tried on contempt charges before judges sitting in open court. And though the powers of a judge even when acting as a one man grand jury may be, as Michigan holds, judicial in their nature, *the due process clause may apply with one effect on the judge's*

> *grand jury investigation, but with quite a different effect when the judge-grand jury suddenly makes a witness before it a defendant in a contempt case.*" (Emphasis supplied.)

It is unnecessary to dwell at length on the rationale of the Supreme Court of Kansas in the *Sims* case, or that of this court in the *Oliver* case. That rationale involves the doctrine of separation of powers, and the distinctions inherent in the administration of justice by duly selected judicial officers, and the duties of the executive branch of government. It is sufficient to say that the doctrine and the distinctions have been long recognized.

The question of the irregularity of the contempt proceedings in which petitioners were convicted and sentenced to jail was presented to the Supreme Court of Kansas in petitioners' brief on the original applications for writs of Habeas Corpus. The third division of the argument contained in that brief was preceded by a query as follows:

> "Does the failure to follow procedure prescribed by the Constitution and statutes of a state by a court in proceeding against persons charged with contempt, render the judgment and sentence for contempt of such persons invalid?"

In the discussion of the question presented it was said, at page 37 of the brief:

> "The petitioners submit that the proceeding before the District Court, *upon their refusal to testify changed from a statutory inquisition to a trial for criminal contempt;* and the character of petitioners

as *witnesses* changed to that *of persons charged with an offense.*" (Italics as appear in the original.)

• • •

"G. S. 1949, 20-1203 provides as follows:

'That a direct contempt may be punished summarily without written accusation against the person arraigned, but if the Court or judge in chambers shall adjudge him guilty thereof a judgment shall be entered of record, in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto, and the sentence of the court thereon.'

"However, it does not follow that the punishment provided by the statute can be so summary in character as to constitute an invasion of rights guaranteed persons accused of a criminal offense by the Constitution of Kansas and the rules of criminal procedure. In the instant case the petitioners were before the Court as witnesses in a secret inquisition. They were denied the right to confer with counsel, or the protection afforded by publicity. They refused to answer certain questions propounded by a special volunteer deputy county attorney. They were advised by the court that they were in contempt, and, continuing in their refusal, they were summarily adjudged in contempt and sentenced to the County jail. *At no time after their refusal to answer and prior to their sentences were they permitted to confer with counsel, nor was the public admitted to the Court Room.* They were immediately delivered to the respondent and placed in jail." (Italics as appear in the original.)

Respondent in his brief in opposition to the petition for certiorari has indicated that petitioners are presenting the question of the impropriety of the trial for con-

tempt in secrecy for the first time in this court. It is true that the term "due process of law" was not employed in the quoted portions of petitioners' brief. However, it is submitted that denial of due process of law is certainly implicit in the question propounded and the argument developed in the brief; and that the Supreme Court of Kansas might have fairly inferred from the question and argument presented that petitioners were denied the "civilized standards" demanded by the due process clause of the Fourteenth Amendment.[13]

The petitioners had earlier raised the issue of a public trial in the second division of their original brief and argument before the Supreme Court of Kansas. The pertinent portions of the brief are quoted in petitioners' Reply Brief to respondent's Brief in Opposition to the petition for certiorari herein.[14]

The Supreme Court of Kansas predicated the denial of petitioners' applications for writs of habeas corpus upon the proposition that the inquisition proceeding was not a criminal prosecution,[15] and that, therefore, petitioners were not entitled to a public hearing. It was said in the opinion of the court (R. 183).

> "There is nothing in the present statute which in anywise indicates a public hearing is contemplated."

The contention of petitioners that the character of the proceedings had changed from an inquisition to a criminal prosecution upon their refusal to answer, and that

13. State of Louisiana ex rel. Francis v. Resweber, 329 U. S. 459, p. 468.
14. Reply Brief of Petitioners, pp. 2, 3.
15. In re Ferris, 175 Kan. 704, Syl. 3; R. 174.

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at that time they were entitled to the procedural standards required in prosecutions for contempt, was largely ignored by the Court below.

It is true petitioners advanced several objections to the validity of their convictions and sentences, some of which presented no federal question, and which are not urged here. It is reiterated, however, that petitioners raised and preserved the Federal questions here presented in their original applications for writs of habeas corpus,[16] in the affidavits attached to their reply,[17] and in their briefs and oral arguments before the Supreme Court of Kansas.

The petitioners have stated in their brief in support of their petition for certiorari that the summary manner in which they were convicted and the severity of the punishment inflicted raises the implication that the inquisition proceeding was punitive in character rather than investigative. They were not extended an opportunity to purge themselves of the contempt in the record of the proceedings before this court. Counsel for respondent on oral argument before the Supreme Court of Kansas indicated that petitioners would be extended an opportunity to purge themselves if it were requested. However, statements of counsel are not binding upon the committing official. As indicative of the true nature of the inquisition, a portion of the dissent filed by Justice Smith in the original proceeding in habeas corpus,[18] may be repeated:

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16. Appendix E, p. 54.
17. R. pp. 152, 153, 154, 155 and 156.
18. In re Ferris, 175 Kan. 774; R. 189.

> "A persuasive incident to me is that when these men were sentenced, in one case to three months and in the other cases to a year in the county jail, the sentences were not in the alternative that they should purge themselves of contempt, but were direct sentences to that much of a term in the county jail.
>
> "The entire affair was punitive and not in the interest of obtaining evidence. Had the investigation been carried on in good faith the sentences would have been, petitioners should be confined in the county jail for the terms indicated or until they should purge themselves of contempt."

The authorities are in complete agreement that an accused's right to the public trial of criminal offenses with which he is charged is of a fundamental character. In the recent case of *People v. Jelke*, (1954) 130 N. Y. S. 2d 662, the Appellate Division of the Supreme Court of New York (1st Dept.) quoted with approval the comments of the Judicial Council of New York, in its opinion at p. 678:

> "'It is further recommended to include sodomy in this section in conformity with the dictum in People v. Hall, 51 App. Div. 57, (4th Dept. 1900) (64 N. Y. S. 433) . . .
>
> "That the protection of a public trial must be given to every defendant charged with a crime is obvious. No court in this nation has ever held otherwise, so far as I am able to ascertain. That principle must be held unimpaired, but its retention does not entirely wrest from the trial judge the discretion to conduct the trial is such wise as to be consonant with good morals and common decency and in an orderly manner'."

The *Jelke* Case, supra, was determined on the issue of the exclusion of the press and public from a *portion*

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of the proceedings, "in the sound administration of justice, and in the interest of good morals."[19] In a dissent filed by Callahan, J., and joined by Dore, J., it was said:

> "There were present in the courtroom, however, during the People's case, in addition to the jury, counsel for defendant and the People, the court personnel, including stenographers, and as many as seventeen different members of the public, all friends of the defendant and selected by him or his lawyer. Sometimes as many as twelve, sometimes less, but always at least one of these persons was in attendance at the various sessions of the court throughout the trial, including the People's case."

Yet in the face of the facts as stated in the dissent above quoted, it was said in the majority opinion:[20]

> "It is unnecessary to speculate as to whether or not the defendant was prejudiced. In United Press Ass'ns v. Valente, 281 App. Div. 395, 399, 120 N. Y. S. 2d 174, 178, it was said 'the decisions are practically unanimous that a judgment of conviction is reversed on appeal by a defendant, without any affirmative showing of prejudice, if he has not had nor waived a public trial. In that event prejudice is presumed. (Citing Cases.)' "

The case of *People v. Byrne*, (Cal. 1948) 84 CA 2d 72, 190 P. 2d 290, involves some of the most startling facts to be encountered in modern reports. The appellant was convicted in 1932 on eight separate counts of kidnapping, forcible rape, perversion and simple assault, under two indictments. He was sentenced to im-

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19. People v. Jelke, 130 N. Y. S. 2d 662, 671.
20. Ibid. p. 680.

prisonment on each count of the indictments; the sentences to run consecutively. He had served the sentences imposed under the first indictment, and at the time of the appeal, the appellant was serving the sentences imposed under the second. The facts of the case are stated in a companion appeal.[21] The only issue considered in the cited case was the defendant's contention that he had been denied a public trial. At the commencement of the trial the prosecutors moved that the case be heard behind closed doors. Appellant's objection was overruled and the trial court ordered " . . . all persons except the defendants, counsel, officers of the court, jurors and those having business with and in the court will be excluded . . . " Presumably this order was carried out and the case was tried under the conditions stated in the order. The California appellate court commented upon the evidence in its opinion in the companion appeal[22], saying:

> "In its mildest form it will be a nauseating recital of depravity, brutality and hideous torture on the part of Byrnes, compared with which the mere slaying of his victim might well have been an act of mercy."

A new trial was ordered in spite of the court's obvious revulsion and horror of the criminal acts of the appellant, and the obscene and sensational nature of the evidence adduced at the trial. It was said in the opinion, at P. 293:

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21. People v. Byrnes, 190 P. 2d 286.
22. Ibid., p. 287.

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"There is not much to be said with reference to the claimed discretion of the court to exclude the public solely upon the ground of the salacious nature of the testimony . . . The exclusion of the general public upon this ground alone was a violation of the defendants constitutional right. What we have said is not intended to apply to a situation in which it would appear to the court that a material witness, because of emotional disturbance, would be substantially prevented from giving testimony in the presence of a crowd of spectators.

"In considering further the matter of the presumption of prejudice we shall extend some of the views previously expressed . . . The question whether the trial was public and the question whether actual prejudice was shown have occasionally been considered together as if the latter were controlling . . . and some courts have reached the conclusion that if the presence of a few spectators is permitted this gives the trial a public character, if no actual prejudice be shown. This, as we have pointed out, is merely to hold that the accused is not entitled to a public trial in the true sense.

"The right to a public trial, in this respect, is comparable to the rights of trial by jury and to the assistance of counsel. They stand on the same footing. All questions as to whether these rights are essential for the protection of the substantial rights of the accused were settled affirmatively by the adoption of section 13 of Article I.[23] There can be no inquiry into the matter, so far as the right to a public trial is concerned, other than in the exceptional cases heretofore mentioned.

"A judgment of conviction, where the defendant has demanded and been refused a public trial, can-

23. Section 13, Article I of the Constitution of California, which guarantees an accused the right to a public trial.

not be allowed to stand, even against the meanest criminal in the land, however guilty he may be of the offenses charged."

It thus appears that the modern cases recognize and hold that prejudice to an accused by reason of the denial of a public trial need not be established to secure a reversal of a conviction where the accused was denied a public trial.

It is submitted, however, that the conviction and sentence of the petitioners in the instant case "behind locked doors and in the presence only of officers of the court whose interests in the minds of the petitioners were inimically opposed to theirs"[24] was prejudicial to the petitioners. It is certainly not beyond the realm of possibility that had they been advised by friends or by counsel of their choice as to the possible consequence of their refusal to answer the petitioners might well have purged themselves of the contempt and the inquisition could have proceeded. In the circumstances in which petitioners found themselves, alone and confronted by officers of the law who were pledged to "stop the violence"[25] which to petitioners could only mean to "stop the strike", their summary conviction and sentence to jail for direct contempt of court fell far short of the procedure required by the due process clause of the Fourteenth Amendment.

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24. Brief in support of petition for certiorari, p. 13.
25. Statements of Mr. Paul R. Kitch, Special Deputy County Attorney, at pages 99, 105 and 143 of the Record.

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The question of whether the due process clause of the Fourteenth Amendment includes within its scope the right to a "public" trial was raised in *Gaines v. State of Washington*, (1928), 277 U. S. 81. In considering the question, but not passing upon it, this court said, at p. 85:

> "It is contended, however, that due process of law exacted in causes tried in state courts must be construed as equivalent to the Sixth Amendment in federal trials. The question has not been answered in any case cited to us. It would involve a consideration of whether due process requires more than a trial that is not private or secret, or whether due process would not be satisfied except by such restriction upon the discretion of the court in regulating attendance as the defendant here insists upon and as is held in some of the authorities cited above in enforcing the Sixth Amendment and similar constitutional provisions of an affirmative character. But we need not pass on that question now."

The question was again before this court in *Re William Oliver*, 333 U. S. 257; and in determining it, it was said, at p. 273 of the opinion:

> "In the case before us, the petitioner was called as a witness to testify in secret before a one-man grand jury conducting a grand jury investigation. In the midst of petitioner's testimony the proceedings abruptly changed. The investigation became a "trial", the grand jury became a judge, and the witness became an accused charged with contempt of court—all in secret. Following a charge, conviction and sentence, the petitioner was led away to prison—still without a break in the secrecy . . . In view of the nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Four-

teenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sent to prison."

It is submitted that in the instant cases petitioners were deprived of their liberty at a criminal trial conducted in disregard of the requirement imposed by the due process clause of the Fourteenth Amendment to the Constitution of the United States, that persons accused of criminal offenses in state courts be afforded due process of law; and the procedure established by Section Ten of the Bill of Rights of the Constitution of the State of Kansas, that criminal trials be public. It is further submitted that under the facts and circumstances of the instant cases, the accusations, trials, convictions and commitment to jail of the petitioners in secrecy constituted an abridgement of the procedural due process of law guaranteed by the State and Federal Constitutions; and, therefore, the convictions and sentences imposed upon petitioners are invalid and they are entitled to discharge from the custody of the respondent herein.

POINT B.

Petitioners submit that the failure to afford them an opportunity to confer with counsel of their own choice or to secure the assistance of counsel, when the character of the proceeding changed from an inquisition to a trial for contempt, was a denial of the procedural due process required by the Fourteenth Amendment to the

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Constitution of the United States, and Section Ten of the Bill of Rights of the Constitution of Kansas.[26]

In its opinion in the instant case the Supreme Court of Kansas, summarizing petitioners' complaint, said:[27]

> "Briefly stated, petitioners assert they were accused of contempt, tried, convicted, sentenced and committed without formal charges first having been preferred against them and without evidence or counsel."

The opinion proceeds to discuss the appropriate section[28] of the statutes which provides for summary disposition of direct contempts. That section provides in part:

> ". . . a direct contempt may be punished summarily, without written accusation against the person arraigned . . ."

The opinion continues:[29]

> "Here we are concerned only with a direct contempt of court committed in the presence of the presiding judge who had personal knowledge of exactly what transpired."

The Supreme Court of Kansas, in effect, held that the summary conviction and sentence of the petitioners, in secrecy and without counsel, was proper. In support of its ruling the court cited *Savin, Petitioner*, 131 U. S. 267, and *Cooke v. United States*, 267 U. S. 517. The facts of the cited cases disclose that in both the con-

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26. Appendix B, p. 47.
27. In re Ferris, 175 Kan. 704, 713; R. 185.
28. Appendix C, p. 51.
29. In re Ferris, 175 Kan. 704, 714; R. 186.

temnor was convicted and sentenced in *open* court. In the *Savin* case the accused was represented by counsel, and in the *Cooke* case the accused was a member of the bar, and practicing before the court which convicted him of contempt.

In *Cooke v. United States,* supra, the petitioner, a member of the bar, had written a letter to the judge of the United States District Court for the Northern District of Texas, in which he expressed dissatisfaction with the manner in which the judge had tried a case in which certain post trial motions were then pending, and which contained an informal request that the judge disqualify himself to hear certain other cases pending in the court. The judge issued an order of attachment for the petitioner Cooke and his client, and after a hearing convicted them of contempt and sentenced each of them to thirty days in jail. This court said in its opinion, at p. 537:

> "Due process of law, therefore, in the prosecution of contempt, *except that of contempt in open court,* requires that the accused should be advised of the charges and have a reasonable opportunity to meet them. *We think this includes the assistance of counsel, if requested,* and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. See Hollingsworth v. Duane, 12 Fed. Cas. 359, 360; In re Stewart, 118 La. 827, 43 So. 4 JS; Ex parte Clark, 208 Mo. 121, 106 SW 990, 15 L.R.A. (N.S.) 389.
>
> "The proceeding in this case was not conducted in accordance with the foregoing principles . . .

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> "After the court had elicited from the petitioner the admission that he had written the letter, the court refused him time to secure and consult counsel, prepare his defense, and call witnesses, and this, although the court itself had taken time to call in counsel as a friend of the court." (Emphasis supplied.)

It clearly appears from the foregoing that this court has recognized the right to assistance of counsel as part of the due process of law required in prosecutions for contempt of court. Petitioners concede that the cited case comes within the scope of the Fifth and Sixth Amendments, rather than the Fourteenth, as the prosecution for contempt was conducted in Federal Court. It is, however, urged that assistance of counsel is an essential portion of the procedural due process of law required by the Fourteenth Amendment.

The cited case *(Cooke v. United States)* distinguishes between prosecutions for contempt "in open court" and prosecutions for other contempts. It is submitted that the distinction is applicable in the instant case. In the *Cooke* case, it was said, at p. 534:

> "To preserve order in the courtroom for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court, when occurring in open court. There is no need of evidence or assistance of counsel before punishment, because the court has seen the offense. Such summary vindication of the court's dignity and authority is necessary. It has always been so, and the punishment imposed is due process of law. Such a case had great consideration in the decision of the court in ex parte Terry, 128 U. S. 289 . . .

"The important distinction between the Terry case and the one at bar is that this contempt was not in open court . . .

• • •

"We think the distinction finds its reason, not any more in the ability of the judge to see and hear what happens in the open court than in the danger that, unless such an open threat to the orderly procedure of the court and such a flagrant defiance of the person and presence of the judge before the public in the 'very hallowed place of justice,' as Blackstone has it, is not instantly suppressed and punished, demoralization of the court's authority will follow. Punishment without issue or trial was so contrary to the usual indispensable hearing before judgment constituting due process that the assumption that the court saw everything that went on in open court was required to justify the exception; but the need for immediate penal vindication of the dignity of the court created it.

"*When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument.*" (Emphasis supplied)

It is clear from the record in the instant case, the opinion of the court below, and the statement of counsel for respondent[30] in his brief in opposition to the petition for certiorari, that the petitioners were convicted of contempt *in camera,* and that the public was excluded. There can be no contention made by respondent that petitioners' alleged contempt was committed in open court, or that petitioners were afforded an opportunity

30. Brief for Respondent in Opposition, p. 1.

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to confer with counsel or otherwise defend themselves during the subsequent proceedings in which they were convicted of criminal contempt. Petitioners submit that in those circumstances, their punishment without trial or hearing and without the advice of counsel constituted a denial of due process of law.

The record of the proceedings [31] and the journal entry [32] of judgment in the case of Ferris, indicates that the petitioner refused to answer any questions on the stated grounds that "It would be in violation of the 14th Amendment. I have no legal counsel and (it) is a violation under Kansas law" and "The whole procedure is illegal under Kansas law." If these contentions of the petitioner were correct a conviction of contempt was plainly improper. However, he was not allowed a hearing or assistance of counsel to present his contentions to a court before he was convicted and sentenced for contempt. It is true that the Supreme Court of Kansas has, in effect, held that the petitioner's contentions were insufficient to justify his refusal to answer the questions propounded. However, that ruling was made in the habeas corpus proceeding, and not in the proceeding which resulted in the petitioner's conviction. It is submitted that the petitioner was at least entitled to a full and fair hearing of the matters he offered in his defense in open court and with the assistance of

31. Record, p. 37.
32. Record, p. 36.
33. Record, p. 134.
34. Record, p. 48.

counsel before he could be convicted and sentenced to jail for contempt of court.

The transcript of the inquisition proceedings [33] and the journal entry [34] in the case of the petitioner Courtney indicates that the petitioner testified at considerable length with reference to the possession of a certain fluid, apparently used in the manufacture of "stench bombs." He was then asked by a deputy county attorney:

Q. What have you done with it?
A. I didn't do nothing with it. Somebody took it from my car and I don't know who it was.

Q. Who did you tell that it was in your car?
A. Who did I tell?

Q. Yes.
A. I didn't tell nobody.

Q. How did they know it was in your car?
A. I imagine Black knew I was going to go get it, I don't know what he done with it.

Q. How did Blacky know that you were going to go get it?
A. I don't know.

Q. Now did you say you did not turn that over to somebody else down at strike headquarters, do you want us to believe that?
A. (No answer.)

Q. Will you answer the question?

The Court: Answer the question.

A. Well, I don't know whether I want you to believe it or not, that is up to you.

Q. Who did you give it to when you took it down to strike headquarters?
A. I object.

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The Court: You will be required to answer.

A. I object.

The Court: You are required to answer, Mr. Courtney. The question is, who did you give it to down at strike headquarters, who did you turn it over to?

A. I object.

The Court: You refuse to answer.

A. Yes, sir.

The Court: You refuse to answer. The only alternative the court has is to punish you for contempt and the court doesn't want to do that to you, Mr. Courtney.

A. I am aware of that fact, your Honor, but I am not going to rat on anybody that I know anything on. If I knew anything I wouldn't tell it, I don't know anything and I ain't going to tell it.

The Court: You are going to refuse to answer this last question as to who you gave it to down at strike headquarters?

A. Yes, sir.

The Court: It is the sentence of this court that you be sentenced to 90 days in the county jail. Take him over.

It may be well argued that the petitioner had answered the questions propounded by the county attorney and the court. He was asked what he had done with the fluid—he answered that someone took it from his car and he did not know who it was. He thought a person named Black or Blacky knew he was going to get the fluid. The question was repeated in substance, and the petitioner objected. The court repeated the question and the petitioner again

objected. He then made a statement which is subject to construction: Construed favorably, it could be understood as though the petitioner had said: "I am not going to inform on parties that I know nothing about; even if I knew anything I would not tell it, but I do not know anything."

The petitioner's statement brought the proceeding to an abrupt close. He had been interrogated for several hours, as evidenced by over thirty pages of testimony in the record.[40] The petitioner could well have been confused; certainly, it appears his interrogators lost the thread of questioning, or else they were attempting to force the petitioner to change his testimony to conform with some preconception of the facts which the interrogators had. In any event, the petitioner was not given an opportunity to make a defense to the charge of contempt, or to consult with counsel before he was summarily sentenced to ninety days in jail. It is submitted that the proceeding which culminated in the sentence to jail was devoid of the barest requirements imposed by the due process clause of the Fourteenth Amendment.

Again, the transcript of the proceeding[41] at which the petitioner Parks was convicted and sentenced for contempt indicates that the petitioner submitted grounds for his refusal to testify in the form of a letter addressed to the Business Representative of the union from its attorneys.[42] As in the case of the petitioner, Ferris, if the

40. Record, pp. 104-136, inclusive.
41. Record, pp. 92 to 98 inclusive.
42 Record, p. 90.

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grounds upon which the petitioner Parks relied for his refusal to testify were valid he was not in contempt for his refusal to answer. However, the petitioner was not given a chance to litigate the questions raised nor was he afforded an opportunity to consult with counsel before he was arbitrarily sentenced to jail for one year for contempt of court.

This peremptory and harsh treatment of the petitioners by their inquisitors was shown to the Supreme Court of Kansas. Justice Smith, in his dissenting opinion,[43] said:

> "It should never be overlooked, the qualification and the only qualification for an inquisition is to obtain information. It is not punitive. The state in these proceedings argues in one breath the purpose is as above, hence the constitutional safeguards do not apply, and in the next breath conducts the inquisition so that the net result is punitive.
>
> "Should these petitioners see fit to stay in jail for the terms for which they were sentenced, and there is no indication they may be afforded an opportunity to do otherwise, then the end the state advances in the inquisition will be defeated.
>
> "Actually the state is by this proceeding avoiding the necessity for calling a grand jury. This is a time honored institution for which our statutes still provide. It is calculated to safeguard the rights of witnesses as well as to aid in intelligent law enforcement.
>
> "Granting for the sake of argument that the inquisition had a legal basis, still I am convinced the record in this case requires the granting of these

43. In re Ferris, 175 Kan. 704, 718; Record p. 191.

writs. G.S. 1949, 62-301, provides among other things: A witness may be imprisoned for contempt for any refusal to answer questions. This must be construed to mean any proper questions or any question asked for the purpose of securing information bearing on the commission of any crime. That must be the proper construction since such is the only reason to justify an inquisition such as this. Obviously before a witness could be punished for contempt for refusing to answer a question, it must appear he was in possession of some such information. The matter of the testimony of Courtney, who was sentenced to three months in jail, has been dealt with already in this dissenting opinion. In the cases of Ferris and Parks, each of whom was sentenced to a term in jail of a year, the transcript of the proceeding attached to the sheriff's return shows the only question asked either one of them bearing on his possession of information was whether he was a striking taxicab driver. There was no testimony whatever that either one of them knew any facts useful to the state. No questions were asked bearing upon the commission of any acts of violence.

"These petitioners have been deprived of their liberty for a year. In my opinion where such a judgment is entered, be it the result of a conviction before a jury, or after a contempt proceeding, the basis therefor should be clear and free from doubt.

"It is my opinion, the orders sentencing these petitioners were arbitrary and unreasonable and in making them the court abused its discretion. The fact that these sentences did not offer the petitioners the privilege of purging themselves of contempt by testifying adds weight to the above conclusion."

This court has stated that the right to assistance of counsel is a fundamental element of procedural due pro-

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cess of law. *Powell v. Alabama*, 287 U.S. 48, 67. The record discloses that the union, of which all the petitioners were members, had legal counsel,[44] and it can be fairly inferred that such counsel was available to advise and defend the petitioners in the contempt proceedings, had an opportunity been afforded petitioners to secure such counsel. Petitioners do not complain that the judge-inquisitor refused to appoint counsel to assist in their defense. It is submitted, however, that the failure to allow petitioners to confer with counsel, or to secure the assistance of counsel of their own choice, who were ready and willing to assist petitioners in their defense, deprived them of a fundamental element of procedural due process of law.

This is not a situation comparable to the facts presented by *Betts v. Brady*, 316 U.S. 455, where an accused requested the trial court to appoint counsel for him. Petitioners submit that the denial of assistance of counsel to persons accused of criminal offenses, where such persons desire counsel and are prepared to provide counsel, is a denial of procedural due process of law. *Powell v. Alabama*, supra; *Grosjean v. American Press Co.*, 297 U.S. 233, 243, 244; *Brown v. Mississippi*, 297 U.S. 278, 286.

In the *Oliver* case, 333 U.S. 257, it was said, at p. 275:

> "Except for a narrowly limited category of contempts, due process of law requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right

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44. Record, p. 90.

to assistance of counsel, and have the right to testify and call other witnesses in his behalf either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eyes of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority . . . before the public . . .'

"The facts shown by this record put this cause outside the narrow category of cases that can be punished as contempt without notice, hearing and counsel. Since the petitioner's alleged misconduct all occurred in secret there could be no possibility of a demoralization of the court's authority before the public . . ."

The language quoted from the cited case can be applied with equal force in the instant case. It is submitted that the convictions and sentences of the petitioners are so permeated with illegality that they cannot be allowed to stand. There can be no question that petitioners were deprived of their liberty without regard for the procedural due process of law guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and by the historical institutions of the common law.

CONCLUSION.

In conclusion it is submitted that the Due Process Clause of the Fourteenth Amendment to the Constitution exacts in criminal causes tried in state courts certain civilized standards of procedure, among which are the right to a public trial and the right to assistance of counsel by persons charged with contempt of court, not committed in open court and not tending to demoralize the court's authority before the public.

It is further submitted that the record herein discloses that the petitioners were convicted and sentenced to jail for criminal contempt of court in proceedings from which the public was excluded, and in which they were denied assistance of counsel and an opportunity to be heard in defense of the criminal charges.

It is therefore requested that the decree of the Supreme Court of Kansas denying the applications of the petitioners for writs of habeas corpus be reversed and remanded to that court with instructions to dispose of the said ap-

plications for writs of habeas corpus in a manner consistent with the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

PAYNE H. RATNER,
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Attorney for Petitioners.

LOUISE MATTOX,
PAYNE H. RATNER, JR.,
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KEITH EALES,
CLIFF W. RATNER,
WILLIAM L. FRY,
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Wichita, Kansas,
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APPENDIX A.

Amendment 14 to the United States Constitution.—RIGHTS AND IMMUNITIES OF CITIZENS:

Section 1. *Citizenship; privileges or immunities; due process clause.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B.

Section Ten of the Bill of Rights of the Constitution of the State of Kansas:

Trial, defense of accused. In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

APPENDIX C.

General Statutes of Kansas, 1949:

Section 62-301. *Inquisitions; subpoena of witnesses; penalty for disobedience; immunity of witnesses.* If a county attorney, attorney general, or assistant attorney general shall be notified by any officer or other person or shall have knowledge of any violation of any law of this state relating to gambling, intoxicating liquors, or of any violation of any law where the accused is a fugitive from justice, it shall be his duty forthwith diligently to inquire into the facts of such offense, and for that purpose he is hereby authorized to issue subpoenas for such persons as he shall have any reason to believe have any information concerning, or knowledge of such offense, to appear before him, at a time and place to be designated in the subpoena, then and there to testify concerning any offense against the laws of the state; or said county attorney, attorney general or assistant attorney general may file with the judge of the district court, a judge of the city court, or with some justice of the peace of the county, a written statement signed by him, alleging any offense against the laws of this state and such judge or justice of the peace shall, on the written praecipe of the county attorney, attorney general or assistant attorney general, issue a subpoena for the witnesses named in such praecipe, commanding such witnesses to be and appear before such judge or justice of the peace at the time stated in such subpoena, to testify concerning any offense against the laws of the state. Such subpoena may be served by the sheriff or any constable of the county, or by any other

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person, a citizen of the county, and shall be served and returned to such county attorney, attorney general, assistant attorney general, judge or justice of the peace, in the same manner subpoenas are served and returned when issued by justices of the peace. Each witness shall be sworn, true answers to make to all questions propounded to him touching the matter of information, and the testimony of each witness shall be reduced to writing and signed by the witness; for the purpose herein the county attorney, attorney general and assistant attorney general are authorized and empowered to administer oaths and affirmations to such witnesses. Any disobedience to the subpoena of the county attorney, attorney general, assistant attorney general, judge or justice of the peace, or any refusal to be sworn as a witness or to sign the testimony given by him, or any refusal to answer any proper questions propounded by the county attorney, atttorney general or assistant attorney general, in such inquiry shall be a misdemeanor and shall be punished by a fine of not more than $300 or be imprisoned in the county jail for not more than ninety days, or by both such fine and imprisonment. Such officers, while so acting as aforesaid, shall have the power to adjourn such proceedings from time to time. A judge or justice of the peace may fine and imprison any person for contempt on account of his refusal to be sworn or to answer questions as a witness, or to sign the testimony; and the attendance of witnesses may be by such judge or justice of the peace compelled by attachment. If the testimony so taken shall disclose the fact that an offense has been committed, such county attorney, attor-

ney general or assistant attorney general shall prosecute the person or persons committing such offense and may file such testimony, together with his complaint or information, against such person or persons in some court of competent jurisdiction, and such testimony, with the information or complaint of the county attorney, attorney general or assistant attorney general, verified by him on information and belief, shall have the same effect as if such information or complaint had been verified positively; and thereupon a warrant shall be issued for the arrest of such person or persons as in other criminal cases. No person shall be excused from testifying in any proceeding as above provided on the ground that his testimony may incriminate him; but no person shall be prosecuted or punished on account of any transaction or matter or thing concerning which he shall be compelled to testify, nor shall such testimony be used against him in any prosecution for any crime or misdemeanor under the laws of this state.

* * *

Section 20-1201. *Two Classes of Contempts.* That contempts of court are divided into two classes, direct and indirect, and shall be proceeded against only as hereinafter prescribed.

Section 20-1202. *Classes of Contempts defined.* That contempts committed during the sitting of the court or of a judge at chambers, in its or his presence, are direct contempts. All others are indirect contempts.

Section 20-1203. *Direct contempts.* That a direct contempt may be punished summarily, without written accusation against the person arraigned, but if the court or judge in chambers shall adjudge him guilty thereof a judgment shall be entered of record, in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto, and the sentence of the court thereon.

• • •

Section 20-302. *Powers of judges.* The judges of the district courts, within their respective districts, shall have and exercise such power in vacation or at chambers as may be provided by law, and shall also have power in vacation to hear and determine motions to vacate and modify injunctions, discharge attachments, vacate orders of arrest, and to grant or vacate all necessary interlocutory orders, and to punish for contempt in open court or at chambers, by fine, not to exceed one hundred dollars, and imprisonment, or either, and to assign not exceeding one attorney to prisoners who may be unable to employ counsel.

APPENDIX D.

THE COMPILED LAWS OF THE STATE OF MICHIGAN, 1929.

Chapter VII

Grand Juries, Indictments, Informations and Proceedings before Trial: • • •

17217. Proceedings before Trial; summoning witness, inquiry, compensation. Sec. 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon the application of the prosecuting attorney, or city attorney in the suspected violation of ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings.

• • •

17218. Same; apprehension of suspected person, finding, disclosure of statement. Sec. 4. If upon such inquiry the justice or judge shall be satisfied that any offense

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has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter or proceeding in like manner as upon formal complaint. And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or public body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be a sufficient complaint as a basis for removal of said officer and the proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. And in respect of communicating or divulging any statement made by such witnesses during the course of such inqury, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

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APPENDIX E.

Original Applications:

IN THE SUPREME COURT OF THE STATE OF KANSAS

Case No. 39,454

In the Matter of the Application of Phillip T. Ferris for a Writ of Habeas Corpus—Filed January 20, 1954.

STATE OF KANSAS,

Sedgwick County, ss:

To the Supreme Court of the State of Kansas:

Your petitioner, Phillip T. Ferris, respectfully represents that he is unlawfully deprived of his liberty by Ty Lockett, Sheriff of Sedgwick County, Kansas, at Wichita, in Sedgwick County, in the State, and that the cause or pretense of his restraint, according to his best knowledge and belief, is as follows:

That on or about January 18, 1954, your petitioner was arrested under authority of a bench warrant, or an order of attachment, issued by the District Court of Sedgwick County, Kansas.

That your petitioner was confined in the Sedgwick County Jail, under the authority of the said bench warrant or order of attachment for a period of hours, after which period and at or about 5:30 P. M., of said day, petitioner was removed from the said Sedgwick County Jail and brought before Judge Howard C. Kline, Judge of Division 2 of the District Court of Sedgwick County, Kansas, whereupon your petitioner was interrogated by one Paul R. Kitch, a special deputy County Attorney of the said county, after first being sworn upon oath.

Upon your petitioner's refusal to answer certain questions propounded by the said special County Attorney, the interrogation was continued by the said Judge. Upon your petitioners refusal to answer certain questions propounded by the said Judge, your petitioner was sentenced to be confined in the County Jail of Sedgwick County, Kansas, for the period of one year for contempt of the said Court, and was delivered into the custody of the said Ty Lockett, Sheriff of Sedgwick County, Kansas, and confined in the said County Jail.

Your petitioner represents and shows to the Court that his said restraint is illegal in this, to-wit:

I. That your petitioner was arrested under process issuing from Division 2 of the District Court of Sedgwick County, Kansas, In the Matter of an Inquisition to Inquire Into Certain Violations of the Laws of the State of Kansas, Case No. A-48004, and was interrogated in said inquisition, and committed to the said County Jail for contempt of Court upon his refusal to answer certain questions propounded by a special deputy County Attorney and the Judge of said District Court.

II. Your petitioner further shows this court that the said District Court before which the said inquisition was and is being conducted has exceeded the authority conferred upon it by G. S. 1949, 62-301, by conducting said inquisition in secret and by denying your petitioner the right to confer with counsel, and by allowing persons unauthorized by law to participate in said inquisition; and said District Court was threfore without

jurisdiction to render the judgment under which your petitioner was committed to the said County Jail.

III. Your petitioner further represents and shows to the court that timely and pertinent objections were made to the questions propounded at said inquisition upon the grounds said questions contravened rights guaranteed to your petitioner by the Fifth and Fourteenth Amendments to the Constitutiton of the United States; that the interrogators sought to compel your petitioner to testify to matters which would incriminate or tend to incriminate him under penal laws of the United States; that your petitioner has been deprived of his liberty without due process of law and has been denied the equal protection of the laws of the State of Kansas.

Wherefore, your petitioner prays that a writ of habeas corpus may be issued, that he may be discharged from said unlawful imprisonment.

Philip T. Ferris

Duly sworn to by Phillip T. Ferris.
Jurat omitted in printing.

AFFIDAVIT IN SUPPORT OF APPLICATION

STATE OF KANSAS,
Sedgwick County, ss:

Phillip T. Ferris, of lawful age, being first duly sworn upon oath, for his Affidavit states:

That he is the petitioner in the above entitled matter; that the above entitled matter seeks the remedy of the writ of habeas corpus directed to the Sheriff of Sedg-

wick County, Kansas; that the original jurisdiction of this Court is invoked for the reason that your petitioner is committed to the custody of the Sheriff of Sedgwick County, Kansas, by the judgment and order of the District Court of said County for contempt of said Court; that no other Court of concurrent or superior jurisdiction exists in said county; that original jurisdiction of proceedings in habeas corpus is conferred upon this court by Article III, Section 3, of the Constitution of the State of Kansas.

Further affiant saith not.

Philip T. Ferris.

Subscribed and sworn to before me, the undersigned Notary Public, this 20th day of January, 1954, Louise Mattox, Notary Public. My Commission Expires Jan. 6, 1955. (Seal)

IN THE SUPREME COURT OF THE STATE OF KANSAS

Case No. 39455

In the Matter of the Application of Cecil L. Courtney for a Writ of Habeas Corpus—Filed January 20, 1954.

STATE OF KANSAS

Sedgwick County, ss:

To the Supreme Court of the State of Kansas:

Your petitioner, Cecil L. Courtney, respectfully represents that he is unlawfully deprived of his liberty by Ty Lockett, Sheriff of Sedgwick County, Kansas, at Wichita, in Sedgwick County, in the State, and that

the cause or pretense of his restraint, according to his best knowledge and belief, is as follows:

That on or about January 18, 1954, your petitioner was arrested under authority of a bench warrant, or an order of attachment, issued by the District Court of Sedgwick County, Kansas.

That your petitioner was confined in the Sedgwick County Jail, under the authority of the said bench warrant or order of attachment for a period of hours, after which period and at or about 5:30 P. M., of said day, petitioner was removed from the said Sedgwick County Jail and brought before Judge Howard C. Kline, Judge of Division 2 of the District Court of Sedgwick County, Kansas, whereupon your petitioner was interrogated by one Paul R. Kitch, a special deputy County Attorney of the said county, after first being sworn upon oath. Upon your petitioner's refusal to answer certain questions propounded by the said special County Attorney, the interrogation was continued by the said Judge. Upon your petitioner's refusal to answer certain questions propounded by the said Judge, your petitioner was sentenced to be confined in the County Jail of Sedgwick County, Kansas, for the period of one year for contempt of the said Court, and was delivered into the custody of the said Ty Lockett, Sheriff of Sedgwick County, Kansas, and confined in the said County Jail.

Your petitioner represents and shows to the Court that his said restraint is illegal in this, to-wit:

I. That your petitioner was arrested under process issuing from Division 2 of the District Court of Sedg-

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wick County, Kansas, In the Matter of an Inquisition to Inquire Into Certain Violations of the Laws of the State of Kansas, Case No. A-48004, and was interrogated in said inquisition, and committed to the said County Jail for contempt of Court upon his refusal to answer certain questions propounded by a special deputy County Attorney and the Judge of said District Court.

II. Your petitioner further shows this court that the said District Court before which the said inquisition was and is being conducted has exceeded the authority conferred upon it by G. S. 1949, 62-301, by conducting said inquisition in secret and by denying your petitioner the right to confer with counsel, and by allowing persons unauthorized by law to participate in said inquisition; and said District Court was therefore without jurisdiction to render the judgment under which your petitioner was committed to the said County Jail.

III. Your petitioner further represents and shows to the court that timely and pertinent objections were made to the questions propounded at said inquisition upon the grounds said questions contravened rights guaranteed to your petitioner by the Fifth and Fourteenth Amendments to the Constitution of the United States; that the interrogators sought to compel your petitioner to testify to matters which would incriminate or tend to incriminate him under penal laws of the United States; that your petitioner has been deprived of his liberty without due process of law and has been denied the equal protection of the laws of the State of Kansas.

Wherefore, Your petitioner prays that a writ of habeas corpus may be issued, that he may be discharged from said unlawful imprisonment.

Duly sworn to by Cecil L. Courtney.

Jurat omitted in printing.

AFFIDAVIT IN SUPPORT OF APPLICATION

STATE OF KANSAS

Sedgwick County, ss:

Cecil L. Courtney, of lawful age, being first duly sworn upon oath, for his Affidavit states:

That he is the petitioner in the above entitled matter; that the above entitled matter seeks the remedy of the writ of habeas corpus directed to the Sheriff of Sedgwick County, Kansas; that the original jurisdiction of this Court is invoked for the reason that your petitioner is committed to the custody of the Sheriff of Sedgwick County, Kansas, by the judgment and order of the District Court of said county for contempt of said Court; that no other Court of concurrent or superior jurisdiction exists in said county; that original jurisdiction of proceedings in habeas corpus is conferred upon this court by Article III, Section 3, of the Constitution of the State of Kansas.

Further affiant saith not.

Cecil L. Courtney.

Subscribed and sworn to before me, the undersigned Notary Public, this 20th day of January, 1954. Louise Mattox, Notary Public. My Commission expires Jan. 6, 1955. (Seal.)

IN THE SUPREME COURT OF THE STATE OF KANSAS

Case No. 39,459

APPLICATION FOR WRIT OF HABEAS CORPUS

In the Matter of the Application of Ray Parks for a Writ of Habeas Corpus—Filed Jan. 22, 1954.

STATE OF KANSAS

Sedgwick County, ss:

To the Supreme Court of the State of Kansas:

Your petitioner, Ray Parks, respectfully represents that he is unlawfully deprived of his liberty by Ty Lockett, Sheriff of Sedgwick County, Kansas, at Wichita, in Sedgwick County, in the State, and that the cause or pretense of his restraint, according to his best knowledge and belief, is as follows:

That on or about January 19, 1954, your petitioner was served with a forthwith subpoena issued by the District Court of Sedgwick County, Kansas, and was bodily taken by the servers thereof to the office of the County Attorney of Sedgwick County, Kansas, and was there held from the approximate time of 3:30 p. m. on said date until approximately 10 p. m., on said date, at which time petitioner was released and instructed by Judge Howard C. Kline, Judge of Division 2 of the District Court of Sedgwick County, Kansas, to return to said court at 5:30 p. m. on January 20, 1954. That your petitioner did appear before said Judge at said time and place and was held in the office of the County Attorney of Sedgwick County, Kansas, until approxi-

mately 6:30 p. m., on said 20th day of January, 1954, at which time your petitioner was brought before Judge Howard C. Kline, Judge of Division 2, of said District Court of Sedgwick County, Kansas, whereupon your petitioner was interrogated by one Paul R. Kitch, a special Deputy County Attorney of said County, after first being sworn upon oath. Upon your petitioner's refusal to answer questions propounded by said special County Attorney, interrogation was continued by the said Judge. Upon your petitioner's refusal to answer questions propounded by said Judge, your petitioner was sentenced to be confined in the County Jail of Sedgwick County, Kansas, for a period of one year for contempt of the said court, and was held in the office of the County Attorney of said County until approximately 7:30 p. m., on January 20, 1954, at which time your petitioner was delivered into the custody of Ty Lockett, Sheriff of Sedgwick County, Kansas, and confined in the County Jail of said county.

Your petitioner represents and shows to the Court that his said restraint is illegal in this, to-wit:

I. That your petitioner was subpoenaed under process issuing from Division 2 of the District Court of Sedgwick County, Kansas, In the Matter of an Inquisition to Inquire Into Certain Violations of the Laws of the State of Kansas, Case No. A-48004, and was interrogated in said inquisition, and committed to the said County Jail for contempt of Court upon his refusal to answer certain questions propounded by a special Deputy County Attorney and the Judge of said District Court.

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II. Your petitioner further shows this court that the said District Court before which the said inquisition was and is being conducted has exceeded the authority conferred upon it by G. S. 1949, 62-301, by conducting said inquisition in secret and by denying your petitioner the right to confer with counsel, and by allowing persons unauthorized by law to participate in said inquisition; and said District Court was therefore without jurisdiction to render the judgment under which your petitioner was committed to the said County Jail.

III. Your petitioner further represents and shows to the court that timely and pertinent objections were made to the questions propounded at said inquisition upon the grounds said questions contravened rights guaranteed to your petitioner by the Fifth and Fourteenth Amendments to the Constitution of the United States; that the interrogators sought to compel your petitioner to testify to matters which would incriminate or tend to incriminate him under penal laws of the United States; that your petitioner has been deprived of his liberty without due process of law and has been denied the equal protection of the laws of the State of Kansas.

IV. That your petitioner, although requesting permission to have advice of counsel, was denied by said Judge the right to counsel at all stages of said proceeding prior to petitioner's being found in contempt of said court as hereinbefore stated.

Wherefore, your petitioner prays that a writ of habeas corpus may be issued, that he may be discharged from said unlawful imprisonment.

Duly sworn to by Ray Parks.
Jurat omitted in printing.

AFFIDAVIT IN SUPPORT OF APPLICATION

STATE OF KANSAS,

Sedgwick County, ss:

Ray Parks, of lawful age, being first duly sworn upon oath, for his Affidavit states:

That he is the petitioner in the above entitled matter; that the above entitled matter seeks the remedy of the writ of habeas corpus directed to the Sheriff of Sedgwick County, Kansas; that the original jurisdiction of this Court is invoked for the reason that your petitioner is committed to the custody of the Sheriff of Sedgwick County, Kansas, by the judgment and order of the District Court of said County for contempt of said Court; that no other Court of concurrent or superior jurisdiction exists in said county; that original jurisdiction of proceedings in habeas corpus is conferred upon this court by Article III, Section 3, of the Constitution of the State of Kansas.

Further affiant saith not.

Ray Parks.

Subscribed and sworn to before me, the undersigned Notary Public, this 21st day of January, 1954. Louise Mattox, Notary Public. My commission expires: Jan. 6, 1955. (Seal.)

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